

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CRIMINAL NO. 17-00582JMS-RLP
Plaintiff,) Honolulu, Hawaii
vs.) November 8, 2017
KATHERINE P. KEALOHA (1),) STATUS CONFERENCE RE: [74]
aka Katherine E. Kealoha,) MOTION TO DISQUALIFY
aka Kathy Kealoha,) DEFENSE ATTORNEYS MYLES S.
aka Kat, aka Alison Lee) BREINER AND KEVIN P.H.
Wong, LOUIS M. KEALOHA (2),) SUMIDA
DEREK WAYNE HAHN (3),)
MINH-HUNG NGUYEN (4),)
aka Bobby Nguyen,)
GORDON SHIRAISHI (5), and)
DANIEL SELLERS (6),)
Defendants.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE J. MICHAEL SEABRIGHT
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: MICHAEL G. WHEAT, ESQ.
ERIC J. BESTE, ESQ.
Special Attorneys to the
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For Defendant MYLES S. BREINER, ESQ.
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1 APPEARANCES (Cont'd.):

2 For Defendant GARY A. MODAFFERI, ESQ.
3 Louis M. Kealoha: Law Office of Gary A. Modafferi LLC
815 S. Casino Center Boulevard
4 Las Vegas, Nevada 89101

5 For Defendants KEVIN P.H. SUMIDA, ESQ.
6 Katherine P. Kealoha Sumida Au & Wong, LLC
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7
8 For Defendant BIRNEY B. BERVAR, ESQ.
9 Derek Wayne Hahn: Bervar & Jones
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11 For Defendant RANDALL K. HIRONAKA, ESQ.
12 Minh-Hung Nguyen: Miyoshi & Hironaka, LLC
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14 For Defendant LARS ROBERT ISAACSON, ESQ.
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17 For Defendant RICHARD H.S. SING, ESQ.
18 Daniel Sellers: The Law Office of Richard H.S. Sing
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19 Honolulu, Hawaii 96813

20 Official Court Cynthia Fazio, RMR, CRR, CRC
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23

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25 Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

1 WEDNESDAY, NOVEMBER 8, 2017 9:59 A.M.

2 THE CLERK: Criminal Number 17-00582JMS-RLP, United
3 States of America versus defendant number one, Katherine P.
4 Kealoha; defendant number two, Louis M. Kealoha; defendant
5 number three, Derek Wayne Hahn; defendant number four,
6 Minh-Hung Nguyen; defendant number five, Gordon Shiraishi; and
7 defendant number six, Daniel Sellers.

8 This case has been called for a status conference re:
9 United States' Motion to Disqualify Defendants' Attorneys Myles
10 S. Breiner and Kevin P.H. Sumida, and the December 19, 2017,
11 trial date.

12 Counsel, please make your appearances for the record.

13 MR. WHEAT: Michael Wheat and Eric Beste for the
14 United States, Your Honor. Good morning.

15 MR. BESTE: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. BREINER: Myles Breiner on behalf of Katherine
18 Kealoha.

19 MR. MODAFFERI: Good morning, Your Honor. Gary
20 Modafferi on behalf of Mr. Kealoha.

21 MR. SUMIDA: Good morning. Kevin Sumida appearing on
22 behalf of Louis Kealoha and Katherine Kealoha.

23 THE COURT: I was looking for you, Mr. Sumida.

24 MR. HIRONAKA: Good morning, Your Honor. Birney
25 Bervar on behalf of defendant number three, Derek Hahn. I'd

1 like to waive my client's presence this morning.

2 THE COURT: All right. Thank you.

3 MR. HIRONAKA: Good morning, Your Honor. Randy
4 Hironaka on behalf of Bobby Nguyen. I would also ask the Court
5 my client's presence to be waived.

6 THE COURT: All right.

7 MR. ISAACSON: Your Honor, Lars Isaacson for Gordon
8 Shiraishi. We'd also ask to waive my client's presence.

9 THE COURT: Okay. Thank you.

10 MR. SING: Good morning, Your Honor. Richard Sing on
11 behalf of Mr. Sellers. He is not present. We would also ask
12 to waive.

13 THE COURT: All right. Thank you. Yes. Okay.
14 Please be seated.

15 MR. SUMIDA: Your Honor, excuse me. May we also just
16 have the record --

17 THE COURT: Okay. You're going to have to use the
18 microphone or you're -- there's one right by Mr. Bervar.
19 You're just going to have to pass it around because the court
20 reporter is tied into the mics only.

21 MR. SUMIDA: Just wanted the record to be clear that
22 the Kealohas are present in the courtroom.

23 THE COURT: Yes. Thank you.

24 Okay. So things have changed a little since I
25 initially asked to get together. So I think we need to sort of

1 be flexible and address this issue regarding the Motion to
2 Withdraw as Counsel. And that is a motion brought by
3 Mr. Breiner and Mr. Sumida who presently represent Katherine
4 Kealoha and Gary Modafferi who represents Mr. Kealoha.

5 Mr. Sumida, are you still representing both of them?

6 MR. SUMIDA: Your Honor, if this case had proceeded
7 further I would have represented only Mrs. Kealoha.

8 THE COURT: Okay. Right now though at least you're on
9 record as representing both?

10 MR. SUMIDA: That's correct.

11 THE COURT: Okay. Very well. Okay.

12 So I want to address the motion first and talk about
13 how we get to a resolution on that motion. It may moot out the
14 Motion to Disqualify, it may not, depending on what I do and
15 how I do it.

16 I do want to though address a couple issues. Because
17 there are some representations in the motion which it seems to
18 me are really put out, just sort of thrown out there and could
19 be used later in an effort to say that we were forced into
20 this, the Kealohas, to say we were forced into this position.
21 And there were two things that are said that I want to address.

22 First, the motion says that the defendants' assets
23 have been effectively frozen by the federal government. I
24 don't know if you're referring to the Hawaii Kai house or what,
25 but we need to have a discussion about that.

1 And secondly, you say the terms of the bond prohibit
2 them from even applying for a loan. Is that what the bond
3 says, Mr. Sumida?

4 MR. SUMIDA: That's what the defendants had been
5 notified, Your Honor.

6 THE COURT: Is that what the bond says? Because maybe
7 you should read the bond before you write something.

8 MR. SUMIDA: Thank you, Your Honor.

9 THE COURT: Because that's not what it says.

10 MR. SUMIDA: All right. I have accepted my clients'
11 representation about what they were told. So, yeah.

12 THE COURT: It doesn't say that. What it says is, for
13 both of them, that: "You are prohibited from applying for or
14 receiving any loans or lines of credit or opening any bank
15 accounts unless otherwise approved by Pretrial Services."
16 That's always in these conditions.

17 I asked Pretrial Services to be here today,
18 Mr. Iverson is here, because I called him this morning to ask
19 was there any effort, any contact made to see if they could
20 apply for a loan. And the answer was no. And if they did, if
21 they did, the process would be that pretrial would take a hard
22 look at it. And if they were uncertain they would come to me.
23 I might if I felt it appropriate to delegate that to somebody
24 else, another judicial officer, not anybody, to take a look at.
25 But I just want to be clear that we need to be careful in

1 representations to the Court as to what facts are on the
2 ground.

3 So, the bond allows loans with approval, loan
4 applications with approval. But there's been no attempt to do
5 that.

6 Now, as far as the assets' been frozen, Mr. Sumida, do
7 you want to address that?

8 MR. SUMIDA: Yes, Your Honor, the major asset which
9 they have is a house in Hawaii Kai. And there's been a lis
10 pendens filed on that house, which makes it -- they were going
11 to try to sell it and raise funds for the defense, but you
12 know --

13 THE COURT: Well, are the press -- are the media
14 reports incorrect regarding the mortgage and so forth on that
15 home?

16 MR. SUMIDA: There is a first mortgage as well as a
17 mortgage --

18 THE COURT: How much is the first mortgage?

19 MR. SUMIDA: I don't have that exact information, Your
20 Honor.

21 THE COURT: I mean I can tell you, I thought I had it
22 with me somewhere, but -- report on this. I don't know it's
23 accurate. I'm not suggesting it is or isn't, I'm just telling
24 you what's been reported, that the tax assessed value is
25 somewhere at 1.24, sounds neighborhoodish to me of what that

1 house might be worth, maybe a little bit north of that. That
2 there's a first mortgage \$980,000, a \$90,000 home equity, and a
3 mortgage from your law firm up to \$700,000.

4 MR. SUMIDA: Yes.

5 THE COURT: Which leaves zero or leaves a big
6 negative. Right?

7 MR. SUMIDA: Yes.

8 THE COURT: Okay. Anything else on that?

9 MR. SUMIDA: No. But the mortgage is -- for my law
10 firm, Your Honor, is up to \$700,000. And we were hoping to
11 free up those -- that cash to help pay for the defense. As it
12 presently stands we're unable to do that.

13 THE COURT: You think you could? I mean, look, this
14 is what I'm saying, we need to be honest and have some
15 integrity here.

16 How much cash is there in that house, how much equity
17 is there in that house?

18 MR. SUMIDA: The real estate market is supposed to be
19 fairly robust. And so there may be 300, \$400,000.

20 THE COURT: And how much is owed to you?

21 MR. SUMIDA: I haven't done the exact figures, Your
22 Honor, but --

23 THE COURT: Give me a ballpark.

24 MR. SUMIDA: Maybe 4 or \$500,000, Your Honor.

25 THE COURT: Yeah. That's what I thought. Again,

1 maybe a little integrity in the filings would be helpful.

2 MR. SUMIDA: Your Honor, if those funds were freed up
3 and payable to my firm, we could have helped them with the
4 defense.

5 THE COURT: If those funds were freed up?

6 MR. SUMIDA: Yes.

7 THE COURT: So if they sold the house and you were
8 paid what you were owed.

9 MR. SUMIDA: Yes.

10 THE COURT: Then you come current.

11 MR. SUMIDA: Yes.

12 THE COURT: And then they would have money to go
13 forward?

14 MR. SUMIDA: No. Then I would have stayed on a little
15 bit longer, Your Honor.

16 THE COURT: Yeah, well, you can't stay on a little bit
17 longer. You'd stay on through trial is what you stay on.
18 Understand that in criminal -- this isn't a civil case.

19 MR. SUMIDA: All right.

20 THE COURT: You don't go to the eve of trial and say,
21 oh, they ran out of money, they need another attorney. It
22 doesn't work like that. You'd be working for free if that was
23 the case because I wouldn't let you off the case at that time.
24 Okay?

25 MR. SUMIDA: All right. Thank you, Your Honor.

1 THE COURT: All right. Anything from the government
2 on that issue?

3 MR. BESTE: No, Your Honor.

4 THE COURT: All right. So, I think the first issue to
5 resolve is whether or not they're qualified for appointment of
6 counsel, right? And as I understand it they didn't -- and I
7 don't blame them, I mean I'm sure they want to look carefully
8 at the financial affidavit, they want to take some time to fill
9 out the financial affidavit. Is that accurate?

10 MR. BREINER: That's correct, Your Honor, and we're
11 asking that you do grant the motion but reserve on the issue of
12 their filling out the form, we need to go over with the --

13 THE COURT: No, no, no, no, that's a preliminary
14 matter that has to be figured out. So we're going to have to
15 come back.

16 MR. BREINER: On the motion to withdraw?

17 THE COURT: Yeah. Right. I mean I can tell you my
18 inclinations as to what I'm thinking down the line if I agree.

19 MR. BREINER: Fair enough.

20 THE COURT: Okay? But again, the media report said
21 Mr. Kealoha has a healthy pension. Whether that's enough, I
22 understand this case is going to be very expensive. I fully
23 appreciate that, Mr. Breiner, and I'm not asking anyone to work
24 with closed eyes regarding that. I mean I get that. The
25 government has said you have some 250,000 pages of discovery;

1 is that right, Mr. Wheat?

2 MR. WHEAT: That's in the ballpark, Your Honor.

3 THE COURT: Ballpark, right.

4 MR. WHEAT: Yeah.

5 MR. BREINER: We were informed, initial discovery is a
6 quarter million pages of documents and 500 witnesses.

7 THE COURT: Yeah, look, I don't know if 500 witnesses
8 is going to get by me, but -- for trial, but --

9 MR. WHEAT: We're not talking about trial witnesses,
10 Your Honor, we're talking about people who have been
11 interviewed from whom there are statements.

12 THE COURT: Okay.

13 MR. WHEAT: But there's not going to be 500 witnesses
14 for trial.

15 MR. BREINER: Whoever represents any of the defendants
16 in the case still has to review everything.

17 THE COURT: Yes.

18 MR. BREINER: And it's very time consuming.

19 THE COURT: Absolutely. Absolutely.

20 MR. BREINER: And as far as their income, I know
21 they'll go over this, look at the papers filed under seal of
22 the Court to review. As it presently stands, the only income
23 they have coming in is the pension of Mr. Kealoha. Ms. Kealoha
24 does not have a pension from the Prosecutor's Office. And they
25 have a daughter who is in college. So --

1 THE COURT: And lay all that out. You know, I'll take
2 a hard look at that.

3 MR. BREINER: Fair enough.

4 THE COURT: And so the Kealohas understand also, the
5 other thing I can do is appoint but reserve the right later to
6 have you pay a portion of the funds. I'm not saying I will or
7 won't do that, but I certainly can do that. And it's likely I
8 would do that at a minimum. It's not to say I'm going to do it
9 ultimately, but I would have the ability to do that, to take a
10 look down the road. Okay. So that's an option also.

11 MR. BREINER: That's not a problem.

12 THE COURT: Okay? So let me tell you where I am, what
13 my thoughts are though about where we will go with this, so
14 everyone is clear.

15 MR. BREINER: May I sit down?

16 THE COURT: Yeah, of course. Of course. First,
17 Mr. Modafferi.

18 MR. MODAFFERI: Yes, sir.

19 THE COURT: Welcome back.

20 MR. MODAFFERI: Thank you. It's good to see you
21 again, Judge.

22 THE COURT: You too. But the fact of the matter is
23 you're new on this case and you don't live here.

24 MR. MODAFFERI: Exactly.

25 THE COURT: And so I would not appoint you as CJA

1 counsel --

2 MR. MODAFFERI: Thank you. I understand.

3 THE COURT: -- in this case. It just makes no sense
4 to do that given the fact you're new to the case, number one,
5 and number two, the distance, the fact you live in Las Vegas.
6 Okay?

7 So if I grant the motion I would get court-appointed
8 counsel for Mr. Kealoha.

9 Okay. As far as Mr. Sumida and Mr. Breiner,
10 Mr. Sumida, my understanding is your practice is primarily
11 civil; is that right?

12 MR. SUMIDA: That's correct, Your Honor.

13 THE COURT: So what is your background in criminal
14 law? Besides this investigation, this case that you --

15 MR. SUMIDA: I don't practice in criminal court, Your
16 Honor.

17 THE COURT: Yeah. So it's very unlikely I will accept
18 you as well.

19 MR. SUMIDA: Yes.

20 THE COURT: For two reasons. That number one,
21 primarily. And number two, then there would be two counsel.
22 And Mr. Breiner has criminal law experience, so it would be no
23 sense to appoint you and not Mr. Breiner, if I were to do that.

24 MR. SUMIDA: Yes.

25 THE COURT: Okay. So that leaves Mr. Breiner. And my

1 inclination, I will hear from everybody on this, I don't know
2 if the government has any say in this or wants to be heard, my
3 inclination is not to appoint you, Mr. Breiner.

4 MR. BREINER: I'm not on the CJA panel. I wasn't
5 requesting appointment.

6 THE COURT: Oh, I thought you were.

7 MR. BREINER: No, I took myself off the CJA panel many
8 years ago.

9 THE COURT: No, I understand that, but the motion asks
10 that you all be appointed as CJA counsel.

11 MR. SUMIDA: Your Honor, motion actually asks for
12 appointment of pro hac vice of CJA counsel.

13 THE COURT: Maybe I misread it. I thought you were
14 asking that I appoint Mr. Modafferi, Mr. Breiner and you as CJA
15 counsel and you get paid at CJA rates.

16 MR. BREINER: No.

17 MR. MODAFFERI: No, Judge, that's not what we're
18 requesting.

19 MR. BREINER: Apologize for the lack of clarity.

20 THE COURT: Well, maybe it's the way I read it.
21 That's what I understood you to be requesting.

22 MR. BREINER: I --

23 THE COURT: But that's fine. That clarification.

24 MR. BREINER: That wasn't my intention and base it
25 upon the CJA rules and manual that we looked at that the Court

1 has the authority to appoint pro hac vice, someone from outside
2 the jurisdiction if necessary given that panel of available
3 attorneys could be appointed in this case has gotten rather
4 shallow.

5 THE COURT: Yeah, it's the last sentence in your
6 motion that made me think you were asking that you be
7 appointed. You're saying there's nobody who could be appointed
8 and work, so appoint us. That's what I thought the point was.

9 MR. BREINER: I was not asking to be appointed in this
10 matter.

11 THE COURT: Okay.

12 MR. BREINER: Given the -- the other motion filed by
13 the U.S. Attorney, special prosecutor, and the issue with my
14 clients' inability to finance their defense in this case, I
15 thought it behooved us to file this motion. After consulting
16 with them yesterday indicating that they can't afford
17 representation, they need to be appointed.

18 THE COURT: Okay. All right. So time wise then.
19 Let's talk about timing because we need to get this resolved
20 obviously.

21 MR. BREINER: I agree.

22 THE COURT: In short order.

23 MR. BREINER: It's difficult for the other attorneys
24 to plan their schedule as well as for the government and as
25 well as the Court to look in your calendar in 2018 or 2019

1 without having --

2 THE COURT: Well, we're not talking 2019, but just --
3 so that's off the table. Okay?

4 MR. BREINER: I kind of threw it out there.

5 THE COURT: Yeah, but you can throw out 2020, but it's
6 not going to happen.

7 MR. BREINER: In any event --

8 THE COURT: And I want to talk to Mr. Isaacson about
9 his motion. Remind me, Mr. Isaacson, before we leave here
10 today. Okay?

11 MR. ISAACSON: Yes, Your Honor.

12 THE COURT: Okay. Regarding that issue of timing, I
13 want to talk to you about that.

14 MR. ISAACSON: Yes, Your Honor.

15 THE COURT: I mean do you want to come back this
16 afternoon, do you want to come back tomorrow? What -- what --

17 MR. MODAFFERI: Either one, Judge. I'm available for
18 both.

19 MR. BREINER: My difficulty is I have a -- I'm
20 supposed to appear in Maui before Judge Bissen on a sentencing
21 that's been continued repeatedly. I have a flight that I catch
22 at 11:30 this morning.

23 THE COURT: Okay. So do you want to come back
24 tomorrow morning?

25 MR. BREINER: That -- tomorrow morning?

1 MR. MODAFFERI: Fine.

2 MR. BREINER: Fine.

3 THE COURT: That way the Kealohas can go home, they
4 can fill out the financial affidavit without, you know, time
5 constraints, right, and take a hard look at that.

6 MR. BREINER: Can I check my calendar?

7 THE COURT: Sure.

8 MR. BREINER: I'll move what I have to move, I just
9 need to check it.

10 THE COURT: Okay.

11 MR. WHEAT: We're available in the morning.

12 THE COURT: Mr. Modafferi, you'll still be here?

13 MR. MODAFFERI: Yes, Your Honor.

14 THE COURT: The rest of you won't need to come for
15 this because this will just be -- you can come, you're welcome.
16 I often make that offer and I never -- no one ever seems to
17 come when I offer people to come back to court. But you can
18 come if you wish, but I think we'll just resolve this and
19 you'll hear about its resolution obviously.

20 MR. BREINER: Can we set it for the late morning
21 tomorrow? Would 11 -- 11 o'clock, Your Honor?

22 (Court and clerk conferring.)

23 THE COURT: Okay. How about 11:15?

24 MR. BREINER: Perfect.

25 THE COURT: Okay? I have something at 10:30. So that

1 should work.

2 MR. BREINER: Thank you for accommodating us.

3 MR. MODAFFERI: Judge, would you like --

4 THE COURT: So some of my comments, I want to be
5 clear, were based on an assumption, as I said, that you folks
6 were trying to get appointed on CJA --

7 MR. BREINER: No, we looked --

8 THE COURT: -- basis. When I talked about why I
9 wouldn't appoint you, Mr. Modafferi, and why I wouldn't appoint
10 you, Mr. Sumida. So, really the only question is whether they
11 qualify. And if they do qualify, then, again, whether
12 provisionally or fully, then as I understand it none of you are
13 asking to be appointed as CJA counsel.

14 MR. MODAFFERI: Correct, Judge.

15 THE COURT: Correct?

16 MR. BREINER: I'm sorry. That's correct, Your Honor.

17 MR. SUMIDA: That's correct.

18 THE COURT: Okay. All right. All right. Anything
19 else as to this motion then at this point? We won't even take
20 up the Motion to Disqualify then until we know where we stand.

21 MR. WHEAT: Understood.

22 THE COURT: Right?

23 MR. WHEAT: Agreed.

24 MR. MODAFFERI: Judge, the information on the form, do
25 you want it before the hearing?

1 THE COURT: You know, that would be good if I could
2 take a look at it. And they'll have to be sworn to it. So,
3 maybe if, Mr. Breiner or Mr. Modafferi, one of you can get --
4 well, first of all, should we do one form or two? I think we
5 need to do two. I don't know if there are separate assets held
6 or not.

7 MR. BREINER: Your clerk gave me two, one -- typed up.
8 One for Mr. Kealoha, one for Mrs. Kealoha.

9 THE COURT: Perfect. I think we need to do that. If
10 there are joint assets, just make that real clear in the form,
11 okay, so that it's really clear what we're talking about. I
12 mean I don't want any confusion as to a hundred thousand here,
13 a hundred thousand there I'm thinking means 200,000, right? So
14 you have to be very clear as to what is joint and what might
15 not be. And I have no idea. So...

16 MR. MODAFFERI: We can submit the information to Your
17 Honor before the hearing and have them sworn in court.

18 THE COURT: That's fine. Let's do that. That makes
19 sense.

20 MR. BREINER: Okay.

21 MR. SUMIDA: Your Honor, do we have to file a motion,
22 have it filed under seal?

23 THE COURT: No, that's filed under seal automatically.

24 MR. SUMIDA: Thank you.

25 THE COURT: Okay. Anything else on that then from

1 anybody?

2 MR. BREINER: No, Your Honor.

3 MR. WHEAT: No, Your Honor.

4 MR. MODAFFERI: When would the Court like that
5 information, Judge, this afternoon?

6 THE COURT: You know, you can do it tomorrow morning,
7 to give them the night, okay, to do it.

8 MR. MODAFFERI: Yes, Your Honor.

9 THE COURT: And then if somebody can bring it in
10 tomorrow morning, get it to Ms. Mizukami or directly to my
11 chambers.

12 MR. MODAFFERI: Good enough. We'll do that.

13 THE COURT: Okay?

14 MR. MODAFFERI: Yes.

15 MR. BREINER: Our apologies for the lack of clarity in
16 that motion. That would explain Your Honor's --

17 THE COURT: Well, read it again. I mean it sounds
18 like that's what you were seeking based on that last sentence.
19 Right?

20 Now, if I do bring in new counsel, I'm inclined to
21 deem the motions you've already filed, Mr. Sumida, withdrawn to
22 allow new counsel -- so new counsel can refile those, but
23 really new counsel should have carte blanche to take a look at
24 the case and decide what motions to file. So I just want you
25 to understand that as well, that that would be my inclination.

1 MR. SUMIDA: Fine with me, Your Honor.

2 THE COURT: All right. Anything -- before I have a
3 discussion with Mr. Isaacson, anything else from anybody?

4 MR. BERVAR: On that issue or -- another issue,
5 there's a Motion for a Protective Order.

6 THE COURT: Use the microphone.

7 MR. BERVAR: Oh, I'm sorry. There's a Motion for a
8 Protective Order.

9 THE COURT: That was sent down to Judge Puglisi. And
10 I think he set that for hearing already.

11 MR. BERVAR: Okay. I think the only -- all right.
12 The Kealohas' counsel and Mr. Isaacson are -- the rest of us
13 are all in agreement on that. Okay. We'll deal with that in
14 front of the magistrate.

15 THE COURT: Well, all I can tell you is the motion was
16 filed and it's been referred to the magistrate.

17 MR. BERVAR: Okay. All right.

18 THE COURT: If everyone can stipulate, I'm happy to
19 sign or I'm sure he'd be happy to sign. But as I understand it
20 there's no agreement.

21 MR. BERVAR: Okay. All right.

22 THE COURT: Mr. Isaacson, then you filed what's
23 referred to as a Motion for Leave to File Other Motions,
24 Document 87. Essentially asking to file motions beyond the
25 deadlines set by the Court.

1 MR. ISAACSON: Yes, Your Honor.

2 THE COURT: But that goes hand in glove with the trial
3 date.

4 MR. ISAACSON: Yes.

5 THE COURT: The way we always set these, when the
6 computer spits out the dates, and it's all of course as you
7 know based on the Speedy Trial Act initially, is that the
8 opposition from the government is due 30 days before the trial
9 date.

10 MR. ISAACSON: Right, Your Honor.

11 THE COURT: So giving you carte blanche to file when
12 you want doesn't work.

13 MR. ISAACSON: No, Your Honor.

14 THE COURT: So what we have to address eventually is a
15 trial date, not a motions date.

16 MR. ISAACSON: Yes, Your Honor. My client was
17 arraigned last week and they set a motions hearing dated
18 yesterday.

19 THE COURT: Right, but the answer is not to seek an
20 extension to the motions. I think the answer is the trial
21 date.

22 MR. ISAACSON: Yes, Your Honor.

23 THE COURT: And then talk about the motions that would
24 go with that.

25 MR. ISAACSON: Yes, Your Honor.

1 THE COURT: Okay? So I'm assuming people will be
2 asking for more time eventually. Is that accurate?

3 MR. ISAACSON: Yes, Your Honor.

4 MR. BERVAR: Yes.

5 MR. SING: Yes.

6 THE COURT: Okay. And obviously right now you folks
7 can't speak, but if you do stay on the case for some reason
8 that would be the case?

9 MR. BERVAR: Yes, Your Honor.

10 THE COURT: I assume given Mr. Breiner's 2019 comment.
11 All right. So I'm going to deny that without
12 prejudice.

13 MR. ISAACSON: That's fine, Your Honor.

14 THE COURT: Okay. To us having a future discussion
15 about trial dates, understanding this trial date looks like
16 it's not going to stick.

17 MR. ISAACSON: Yes, Your Honor.

18 THE COURT: Okay? My ultimate goal will be this?? Is
19 to engage in some pretty active management in this case. That
20 would be including setting a trial date, pretrial motions to be
21 sufficiently in advance of that that any motions that would be
22 resolved and everyone would know where they stand with plenty
23 of time to prepare. Right? The normal schedule probably won't
24 work, right? In a lot of respects.

25 The other thing that I'm going to -- and again, we

1 have to make sure we know exactly which counsel are on board,
2 that I'm going to want to have a discussion about is, we now
3 have two case budgeting attorneys in the Ninth Circuit for
4 complex criminal cases.

5 MR. ISAACSON: May I sit, Your Honor?

6 THE COURT: Yes, yes, yes.

7 There are guidelines as to when we at the district
8 level are supposed to refer cases to them. And it seems to me
9 this case will easily meet those guidelines.

10 A lot of CJA attorneys when they hear this they
11 cringe, they don't like the concept, but those who undergo it
12 really like it. Because they can point out to you resources
13 you may not know are available. For instance, if there's
14 250,000 pages of discovery and you want somebody to help in the
15 organization of that in searching and so forth, they can help
16 find somebody who can do that sort of work outside, right? So
17 what that person does is organize a lot of things that are
18 going on, on the defense team and make sure there's not a
19 duplication of expenses.

20 Also, as I understand what it does is, you sort of
21 provide budgets and if those budgets get approved, that's
22 presumptively reasonable going forward when the vouchers are
23 reviewed, that sort of thing. So the lawyers like it for that
24 reason as well. We don't have much of a culture of cutting
25 vouchers in this district. Other districts have more so than

1 we do. But that's another benefit to that process.

2 So I want to look a little further into that, wait and
3 see where we end up on counsel, but then probably refer counsel
4 to the Ninth Circuit case budgeting attorneys to start to have
5 some discussions. Okay? But that would be a little bit down
6 the road.

7 Hopefully your discovery is in the format that they
8 can read it easily.

9 MR. WHEAT: Your Honor, as for the discovery, we
10 are -- we bought hard drives and we intend to download the hard
11 drives with the discovery in a searchable format. We'll also
12 provide them, we've drafted, it's about in excess of 200 pages
13 in index for that discovery. So it will be searchable and it
14 will be organized for them in a way that it'll be usable for
15 them.

16 THE COURT: Okay. Well, that's great. You each get
17 your own temporary hard drive I guess.

18 All right. Anything else then by way of status to
19 cover today?

20 MR. BREINER: No, Your Honor. Thank you.

21 THE COURT: Before we come back tomorrow?

22 MR. MODAFFERI: No, Your Honor. Thank you.

23 MR. SUMIDA: No, Your Honor.

24 MR. WHEAT: Nothing further, Your Honor. Thank you.

25 THE COURT: All right. Thank you all.

1 (The proceedings concluded at 10:25 a.m.,
2 November 8, 2017.)
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1 COURT REPORTER'S CERTIFICATE

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3 I, CYNTHIA FAZIO, Official Court Reporter, United
4 States District Court, District of Hawaii, do hereby certify
5 that pursuant to 28 U.S.C. §753 the foregoing pages is a
6 complete, true, and correct transcript of the stenographically
7 reported proceedings held in the above-entitled matter and that
8 the transcript page format is in conformance with the
9 regulations of the Judicial Conference of the United States.

10

DATED at Honolulu, Hawaii, December 22, 2017.

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13 /s/ Cynthia Fazio
14 CYNTHIA FAZIO, RMR, CRR, CRC

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